

Paul G. Shearer
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 ANCHORAGE ALASKA*

UNITED STATES DISTRICT COURT

DISTRICT OF ALASKA

PAUL G. SHEARER,)	Case No. A03-0263 CV (JKS) (Consolidated)
Plaintiff,)	
))	
vs.)	
UNITED STATES OF AMERICA, GALE A. NORTON, Secretary of the Interior, DEPARTMENT OF INTERIOR, and, NATIONAL PARK SERVICE,)	<u>PLAINTIFF'S CROSS MOTION FOR PARTIAL SUMMARY JUDGMENT RE: Parcels 3, 14, 15, 20, AND REQUEST TO AMMEND COMPLAINT TO INCLUDE JURISDICTION FOR Mining in the Parks Act, 16 U.S.C</u>
Defendants.)	
))	

Plaintiff Paul G. Shearer hereby moves for partial summary judgment against the defendant United States pursuant to Rule 56(b), Fed.R.Civ.Proc. on the issue of the validity of his consent executed on February 12, 1998 with regard to Parcels 3, 14, 15, and 20 identified in his First Amended Complaint. Shearer contends that his consent of those parcels is valid as a matter of law since there is nothing in Public Law No. 105-83 Section 120 ("Section 120") that precluded Shearer from being able to consent the interests claimed by Shearer in mining claims defined by Parcels 3, 14, 15, 20.

Furthermore, Shearer moves for the court's permission to file a Second Amended Complaint for the purpose of expanding the Jurisdiction section of the complaint to include the jurisdiction established in the "Mining in the Parks Act, 16 U.S.C. Secs 1901, et seq. including

the provision in 16 U.S.C. Section 1910” that allows a mining claimant whose property is located within a unit of the National Park System to bring a takings action against the federal government and confers jurisdiction for such takings of mining claims in Alaska on the U.S. District Court for the District of Alaska.

Shearer’s motion for partial summary judgment is being filed as a cross motion to the United States’ Motion for Partial Summary Judgment Parcels 3, 14, 15, 20 (Docket 84) before the Court. Shearer incorporates by reference the arguments in his Opposition to the Motion of the United States for Partial Summary Judgment 3, 14, 15, 20 (“Opposition”), filed simultaneously herewith, and in addition his relevant arguments in a previous Opposition to the Motion of the United States for Partial Summary Judgment (Docket 65). Shearer’s Opposition argument contends that the legislative history to ANILCA and Section 120 allows him to consent via Section 120, all of his interest whatsoever in the “mining claims” defined in his First Amended Complaint as parcels 3, 14, 15, 20.

For all of the above reasons, then plaintiff Paul Shearer respectfully requests the Court enter partial summary judgment in his favor pursuant to Rule 56(b), Fed. R. Civ. Proc., as to the validity of his consent for a Section 120 taking of all of Shearer’s interest, whatsoever, for Parcels 3, 14, 15, 20 identified in the First Amended Complaint. Furthermore plaintiff Paul Shearer respectfully requests the Court grant Shearer’s request to amend his First Amended Complaint and file a Second Amended Complaint to add to the Jurisdiction section the “Mining in the Parks Act, 16 U.S.C. Secs 1901, et seq. including the provision in 16 U.S.C. Section 1910” that allows a mining claimant whose property is located within a unit of the National Park System to bring a takings action against the federal government and confers jurisdiction for such takings of mining claims in Alaska on the U.S. District Court for the District of Alaska.

DATED at Lake Oswego Oregon, this 19 day of November, 2006.



Plaintiff
Paul G. Shearer
1532 Meadows Drive
Lake Oswego, Oregon 97034

CERTIFICATE OF SERVICE

I certify that a copy of the above documents was mailed, by first class mail addressed to the persons at the addresses stated below on November 20, 2006.



Paul G. Shearer

Addressee(s):

US District Court
Clerk of Court
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